

000281

REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CEF
(FOI) 52
7/10R
ONLY)

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): Park and Recreation Department

May 14, 2007

4. SUBJECT: Edison Elementary School Joint Use Agreement

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.) Carol Wood, 525-8217, MS #37C

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.) Samir Mahmalji, 236-7342, MS #35

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED ☒

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT

9. ADDITIONAL INFORMATION / ESTIMATED COST: None with this action.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	5/21/07	7	DEPUTY CHIEF	<i>[Signature]</i>	5/11/07
2	EAS	<i>[Signature]</i>	5-14-07	8	COO	<i>[Signature]</i>	5/11/07
3	EOCP	<i>[Signature]</i>	5-23-07	9	CITY ATTORNEY	<i>[Signature]</i>	6/1/07
4	LIAISON OFFICE	<i>[Signature]</i>	5/25/07	10	ORIGINATING DEPARTMENT	<i>[Signature]</i>	6/7/07
5	FM/CIP	<i>[Signature]</i>	5/29/07		DOCKET COORD:	<i>[Signature]</i>	
6	AUDITOR	<i>[Signature]</i>	5/31/07		COUNCIL PRESIDENT	<i>[Signature]</i>	

☐ SPOB ☒ CONSENT ☐ ADOPTION
☐ REFER TO: COUNCIL DATE: 6/26/07

11. PREPARATION OF: ☐ RESOLUTION(S) ☒ ORDINANCE(S) ☐ AGREEMENT(S) ☐ DEED(S)

1. Authorizing the Mayor to introduce the Ordinance to execute the lease and joint use agreement between the City of San Diego and the San Diego Unified School District for construction, operation, maintenance, and lease of artificial turf fields at Edison Elementary School.

11A. STAFF RECOMMENDATIONS: Introduce the Ordinance.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): 3 (ATKINS)

COMMUNITY AREA(S): MID CITY - CITY HEIGHTS

ENVIRONMENTAL IMPACT: THIS PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO STATE CEQA GUIDELINES SECTION 15301 (EXISTING FACILITIES).

HOUSING IMPACT: NONE

OTHER ISSUES: NONE

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: May 14, 2007 REPORT NO:
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Park and Recreation Department
SUBJECT: Edison Elementary School Joint Use Agreement
COUNCIL DISTRICT(S): (3) Atkins
CONTACT/PHONE NUMBER: Carol Wood / Samir Mahmalji
525-8217 / 236-7342

REQUESTED ACTION:

Authorizing the Mayor to introduce the ordinance to execute the lease and joint use agreement between the City of San Diego and the San Diego Unified School District for construction, operation, maintenance, and lease of artificial turf fields at Edison Elementary School.

STAFF RECOMMENDATION:

Staff recommends introduction and approval of the ordinance.

EXECUTIVE SUMMARY:

Edison Elementary School is located at 4077 35th Street in the Mid City (City Heights) Community. The proposed joint use agreement with the San Diego Unified School District (SDUSD) would provide for 1.25 acres of artificial turf multi-purpose field area. The City Heights Community Planning Area is park deficient; therefore, this project will help to satisfy the community's and SDUSD's recreational and athletic programmatic needs.

The City's Progress Guide and General Plan recommends 10 usable acres of neighborhood park for every 3,500 to 5,000 residents. In areas of the city where parkland is deficient per the City's General Plan standards, joint use facilities have provided a venue for City recreation programs typically provided at neighborhood parks. A joint use facility is defined as land or facilities that are owned by the City or another agency and shared between agencies to meet the recreational and physical education needs of both agencies.

The City and the District have been cooperating in the use of numerous recreational facilities in accordance with the City-District Recreation Agreement of September 1948, and the Memorandum of Understanding between the City and District for the Development and Maintenance of Joint Use Facilities adopted by the San Diego City Council on October 7, 2002 (Resolution No. R-297149), and by the District's Board of Education on October 8, 2002. Currently, the City has approximately 100 joint use agreements with various school Districts citywide.

The City and District have previously entered into an agreement regarding the Edison Elementary School joint use facilities. The Agreement between the San Diego Unified School District and the City of San Diego Regarding Joint-Use Facilities at Edison Elementary School was adopted by the San Diego City Council on October 28, 1997 (Resolution No. 289350-1) and the District's Board of Education on August 27, 1996. Pursuant to this Agreement, the District

agrees to pay all costs for electricity, water and other expenses relating to maintenance of the joint use playfield for a period of twenty-five (25) years after completion of construction of the field area.

The proposed artificial turf fields at Edison Elementary School will be developed and maintained through this twenty-five (25) year no fee lease and joint use agreement with the San Diego Unified School District (SDUSD). The terms of the agreement allow for the development, operation, and maintenance of artificial turf multi-use playing fields. Funding for design and construction of the turf fields will be provided by the SDUSD as a part of the Proposition MM measure. Pursuant to the previous agreement between the City and the SDUSD, the District will be responsible for the maintenance of the artificial turf per the joint use agreement.

FISCAL CONSIDERATIONS:

District agrees to pay all costs for electricity, water and other expenses relating to maintenance of the joint use playfield for a period of twenty-five (25) years after completion of construction of the field area.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City and District have previously entered into an agreement regarding the Edison Elementary School joint use facilities. The Agreement between the San Diego Unified School District and the City of San Diego Regarding Joint-Use Facilities at Edison Elementary School was adopted by the San Diego City Council on October 28, 1997 (Resolution No. 289350-1) and the District's Board of Education on August 27, 1996.

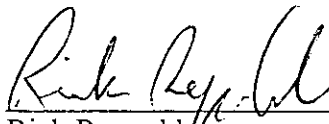
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The San Diego Unified School District conducted numerous public workshops in the City Heights community to gather input on the design of this school.

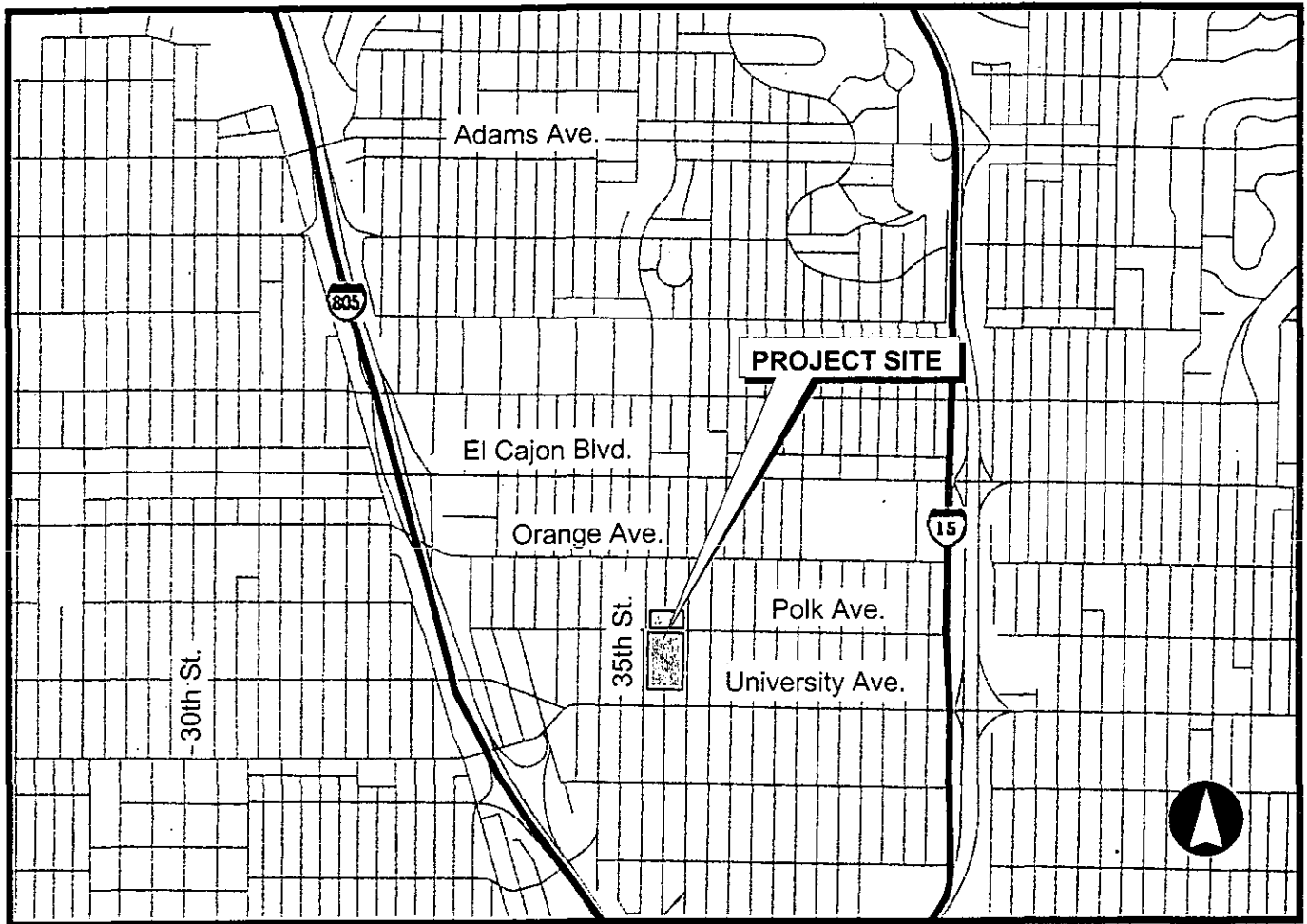
KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the City, the District, the City Heights Recreation Council and community members in City Heights.


Stacey LoMedico, Director
Park and Recreation Department


Rick Reynolds,
Assistant Chief Operating Officer

000285



Vicinity Map for Edison Elementary Joint Use

000287

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE CITY COUNCIL AUTHORIZING A
TWENTY-FIVE YEAR LEASE AND JOINT USE
AGREEMENT WITH THE SAN DIEGO UNIFIED SCHOOL
DISTRICT IN CONNECTION WITH TURF FIELDS AT
EDISON ELEMENTARY SCHOOL.

WHEREAS, the City of San Diego [City] and San Diego Unified School
District [District] have cooperated on joint use of facilities pursuant to the
Memorandum of Understanding on file in the office of the City Clerk as
Document No. RR-297149; and

WHEREAS, the City and the District previously entered into an
agreement regarding the District's sole obligation to use, design, construct, and
maintain the property at Edison Elementary for joint use fields on October 28,
1997, on file in the office of the City Clerk as Document RR-289350-1; and

WHEREAS, in accordance with that agreement, the District intends to
make improvements to the fields at Edison Elementary School to make the fields
suitable for recreational use and to maintain the turf fields, and the City would
like to make use of the District improvements; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor or his representative is authorized to execute, for and on
behalf of the City, a twenty-five year lease and joint use agreement with the San Diego Unified
School District for construction, operation, maintenance, and lease of turf fields at Edison

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Elementary School, under the terms and conditions set forth in the Agreement, on file in the office of the City Clerk as Document No. OO-_____.

Section 2. That this activity is categorically exempt from the requirements of the California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas
Shannon Thomas
Deputy City Attorney

ST:sc
06/04/07
Aud.Cert.: N/A
Or.Dept:Park&Rec
O-2007-157

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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ORIGINAL

COPY

157-496-1767

AGREEMENT
BETWEEN
THE SAN DIEGO UNIFIED SCHOOL DISTRICT
AND
THE CITY OF SAN DIEGO
REGARDING
JOINT-USE FACILITIES
AT
EDISON ELEMENTARY SCHOOL

WHEREAS, it is to the mutual benefit of the San Diego Unified School District ("District") and the City of San Diego ("City") to contribute jointly to the acquisition of property and development of joint-use playfields at Edison Elementary School, located at 4077 35th Street, which will serve the needs of both the District and community; and

WHEREAS, the City is desirous of developing recreational playfields to serve the community; and

WHEREAS, the District is desirous of expanding the land base of Edison Elementary School in order to improve the school facilities for the students; and

WHEREAS, the City has acquired seven (7) parcels of land north of Polk Street and east of 35th Street adjacent to Edison Elementary School; and

WHEREAS, the District owns Edison Elementary School which comprises approximately 3.32 acres.

NOW THEREFORE, The District and City agree to the following:

1. City agrees to make the seven (7) residential parcels of land shown on Exhibit A comprising approximately 0.70 acres available with fee-simple ownership to be transferred to the District, at no cost to the District, for the construction of joint-use facilities. District agrees to take title to said seven (7) parcels within 120 days from the date of City's approval of this Agreement.
2. District agrees to acquire at its cost and make available three (3) residential parcels shown on Exhibit A comprising approximately 0.21 acres with ownership to remain with the District for the construction of joint-use facilities.
3. District agrees to pay the cost of demolition of the existing structures on the ten (10) residential parcels and administer the demolition contract(s).
4. City agrees to cooperate in the expeditious processing for consideration by the City Council for the proposed vacation of Polk Street between 35th Street and Wilson Avenue, and the proposed vacation of a portion of the alley north of Polk Street.

DOCUMENT NO. 157-289350-1

FILED OCT 28 1997

Agreement between the District and City
Regarding Joint-Use Facilities at
Edison Elementary School
August 27, 1996
Page 2

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5. If the vacation of Polk Avenue and the intersecting alley is not approved by the City, said seven (7) parcels shall be reconveyed by District to City forthwith, and City shall accept title to said parcels.
6. If the seven (7) parcels acquired by the City and transferred to the District are not used for school or recreational purposes, said parcels shall be reconveyed by District to City forthwith at no cost to the City and District, and City shall accept title to said parcels.
7. District and City mutually agree that, in the event the District is unable to acquire any of the properties under consideration due to requirements of the Education Code of the State of California, the seven (7) parcels will be reconveyed to the City.
8. District agrees to provide administrative services toward the development and construction of joint-use playfields.
9. District and City agree to work cooperatively in the design of the joint-use playfields and related improvements on school property.
10. District agrees to provide funding for consulting design services and environmental review relating to the joint-use playfields.
11. District agrees to pay the costs of construction for the joint-use playfields.
12. District and City agree that acquisition, demolition, design and development of the joint-use playfields will occur as funds become available. However, if not completed within ten (10) years, the seven (7) properties will be reconveyed to the City. The District reserves the option to an extension of an additional five (5) years, if necessary, and agreed upon by the City.
13. Upon completion of the joint-use playfields, the District shall have exclusive use of the playfields from Monday through Friday during regularly scheduled school hours, on each and every day that school is in session. The community will have use of the playfields on weekdays after regular school hours, all day Saturday, Sunday and holidays.
14. District agrees to maintain and pay all costs for electricity, water and other expenses relating to maintenance of the joint-use turfed playfields for a period of twenty-five (25) years.

Agreement between the District and City
Regarding Joint-Use Facilities at
Edison Elementary School
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15. City agrees to be responsible for litter collection and removal for community activities and events sponsored by the City, and on all days when school is not in session.
16. District and City shall mutually develop and enter into a joint-use agreement for the operation and maintenance of the joint-use playfields prior to the advertisement for construction bids for the joint-use playfields.

WHEREFORE, District and City have caused this Agreement to be signed on their behalf by their duly authorized representatives as follows:

San Diego Unified School District

City of San Diego

By: Bertha O. PendletonName: Bertha O. Pendleton
Superintendent

Title: _____

Date: 9/3/96By: Robert T. CollinsName: Robert T. CollinsTitle: Real Estate Assets Manager

Date: _____

approved as to form and legality

this 1st day of November, 1997
CASEY GWINN, City AttorneyBy: [Signature]
Deputy City Attorney

LEGALITY AND FORM APPROVED:

[Signature]
MELANIE PETERSEN, Deputy General Counsel
San Diego Unified School DistrictApproved in public meeting of the
Board of Education of the San Diego
Unified School District on 8/27/96:[Signature]
Cheryl Ward, Recording Secretary
Board of Education

E00Sa-96/Edison Agreement

R- 289350

000294

(R-98-359)


RESOLUTION NUMBER R- 289350ADOPTED ON OCT 28 1997

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of The City of San Diego, an agreement between The City of San Diego and the San Diego Unified School District regarding joint-use facilities at Edison Elementary School, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR- 289350 -1

BE IT FURTHER RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, a Grant Deed conveying the seven City-owned parcels located between Wilson Avenue and 35th Street, North of Polk Avenue in the Mid-City area to the San Diego Unified School District, a copy of which Deed is on file in the office of the City Clerk as Document No. RR- 289350 -2

APPROVED: CASEY GWINN, City Attorney

By



William T. Griffith
Deputy City Attorney

WTG:cfk
09/29/97
Or.Dept:REA
R-98-359
Form=auagr.res

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Passed and adopted by the Council of San Diego on

OCT 28 1997

by the following vote:

YEAS: Mathis, Kehoe, Stevens, Warden, McCarty, Vargas,Mayor Golding.

NAYS: _____

NOT PRESENT: Wear, Stallings.

AUTHENTICATED BY:

SUSAN GOLDING

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By: MARY A. CEPEDA, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. R- 289350,
passed and adopted by the Council of The City of San Diego,
California on OCT 28 1997.

CHARLES G. ABDELNOUR

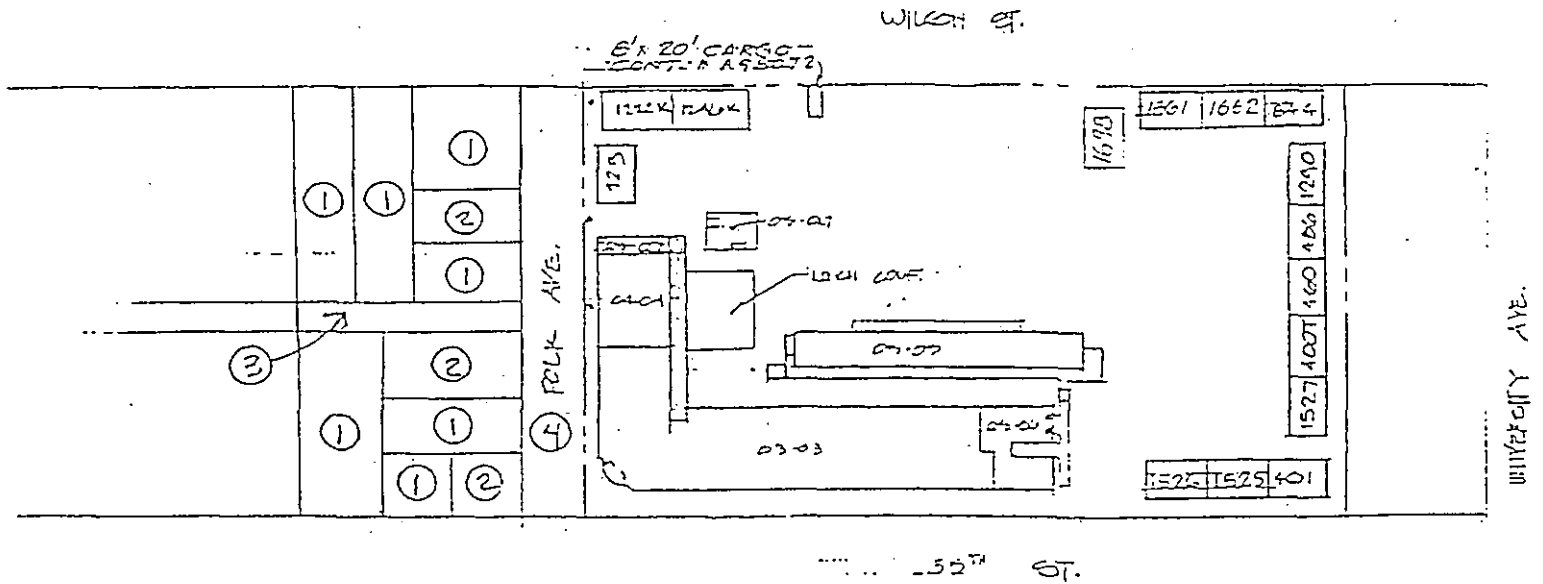
City Clerk of The City of San Diego, California

(SEAL)

By: Mary A. Cepeda, Deputy

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EXHIBIT A



- ① PARCELS ACQUIRED BY CITY
- ② PARCELS TO BE ACQUIRED BY DISTRICT
- ③ ALLEY VACATION
- ④ STREET VACATION

EDISON ELEMENT
SMALL SCALE PLOT PLAN

SAN DIEGO UNIFIED SCHOOL DISTRICT

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AGREEMENT
BETWEEN

THE SAN DIEGO UNIFIED SCHOOL DISTRICT

AND

THE CITY OF SAN DIEGO

REGARDING

JOINT-USE FACILITIES

AT

EDISON ELEMENTARY SCHOOL

File
Edison

WHEREAS, it is to the mutual benefit of the San Diego Unified School District ("District") and the City of San Diego ("City") to contribute jointly to the acquisition of property and development of joint-use playfields at Edison Elementary School, located at 4077 35th Street, which will serve the needs of both the District and community; and

WHEREAS, the City is desirous of developing recreational playfields to serve the community; and

WHEREAS, the District is desirous of expanding the land base of Edison Elementary School in order to improve the school facilities for the students; and

WHEREAS, the City has acquired seven (7) parcels of land north of Polk Street and east of 35th Street adjacent to Edison Elementary School; and

WHEREAS, the District owns Edison Elementary School which comprises approximately 3.32 acres.

NOW THEREFORE, The District and City agree to the following:

1. City agrees to make the seven (7) residential parcels of land shown on Exhibit A comprising approximately 0.70 acres available with fee-simple ownership to be transferred to the District, at no cost to the District, for the construction of joint-use facilities. District agrees to take title to said seven (7) parcels within 120 days from the date of City's approval of this Agreement.
2. District agrees to acquire at its cost and make available three (3) residential parcels shown on Exhibit A comprising approximately 0.21 acres with ownership to remain with the District for the construction of joint-use facilities.
3. District agrees to pay the cost of demolition of the existing structures on the ten (10) residential parcels and administer the demolition contract(s).
4. City agrees to cooperate in the expeditious processing for consideration by the City Council for the proposed vacation of Polk Street between 35th Street and Wilson Avenue, and the proposed vacation of a portion of the alley north of Polk Street.

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Agreement between the District and City
Regarding Joint-Use Facilities at
Edison Elementary School
August 27, 1996
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5. If the vacation of Polk Avenue and the intersecting alley is not approved by the City, said seven (7) parcels shall be reconveyed by District to City forthwith, and City shall accept title to said parcels.
6. If the seven (7) parcels acquired by the City and transferred to the District are not used for school or recreational purposes, said parcels shall be reconveyed by District to City forthwith at no cost to the City and District, and City shall accept title to said parcels.
7. District and City mutually agree that, in the event the District is unable to acquire any of the properties under consideration due to requirements of the Education Code of the State of California, the seven (7) parcels will be reconveyed to the City.
8. District agrees to provide administrative services toward the development and construction of joint-use playfields.
9. District and City agree to work cooperatively in the design of the joint-use playfields and related improvements on school property.
10. District agrees to provide funding for consulting design services and environmental review relating to the joint-use playfields.
11. District agrees to pay the costs of construction for the joint-use playfields.
12. District and City agree that acquisition, demolition, design and development of the joint-use playfields will occur as funds become available. However, if not completed within ten (10) years, the seven (7) properties will be reconveyed to the City. The District reserves the option to an extension of an additional five (5) years, if necessary, and agreed upon by the City.
13. Upon completion of the joint-use playfields, the District shall have exclusive use of the playfields from Monday through Friday during regularly scheduled school hours, on each and every day that school is in session. The community will have use of the playfields on weekdays after regular school hours, all day Saturday, Sunday and holidays.
14. District agrees to maintain and pay all costs for electricity, water and other expenses relating to maintenance of the joint-use turf playfields for a period of twenty-five (25) years.

SENT BY: Real Estate Assets

-17-97 4:12PM City of San

619 291 0201

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Agreement between the District and City
Regarding Joint-Use Facilities at
Edison Elementary School
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Page 3

15. City agrees to be responsible for litter collection and removal for community activities and events sponsored by the City, and on all days when school is not in session.
16. District and City shall mutually develop and enter into a joint-use agreement for the operation and maintenance of the joint-use playfields prior to the advertisement for construction bids for the joint-use playfields.

WHEREFORE, District and City have caused this Agreement to be signed on their behalf by their duly authorized representatives as follows:

San Diego Unified School District

City of San Diego

By: Bertha O. Pendleton

By: _____

Name: Bertha O. Pendleton
Superintendent

Name: _____

Title: _____

Title: _____

Date: 9/3/96

Date: _____

LEGALITY AND FORM APPROVED:

Melanie Petersen
MELANIE PETERSEN, Deputy General Counsel
San Diego Unified School District

Approved in public meeting of the
Board of Education of the San Diego
Unified School District on 8/27/96

Cheryl Ward
Cheryl Ward, Recording Secretary
Board of Education

E009a-96/Edison Agreement

Post-It® brand fax transmittal memo 7671		# of pages <u>3</u>
To <u>PAT ZOLLER</u>	From <u>MIKE STEFFEN</u>	
On _____	On _____	
Dept. _____	Phone # <u>236-6725</u>	
Fax # <u>297-6201</u>	Fax # _____	

**AGREEMENT FOR THE
CONSTRUCTION, OPERATION, MAINTENANCE, AND LEASE
OF JOINT USE FACILITIES AT
EDISON ELEMENTARY SCHOOL**

THIS AGREEMENT [Agreement] for The Construction, Operation, Maintenance and Lease of Joint Use Facilities, as further described in Section 1 of this Agreement, at EDISON ELEMENTARY SCHOOL [School] is entered into this 27th day of February, 2007 between the CITY OF SAN DIEGO, a municipal corporation [CITY], and the SAN DIEGO UNIFIED SCHOOL DISTRICT of San Diego County, a public school district of the State of California [DISTRICT], [collectively, the Parties] based on the following facts:

RECITALS

- A. CITY and DISTRICT have been cooperating in the use of numerous recreational facilities in accordance with the CITY-DISTRICT Recreation Agreement of September 1948, and the Memorandum of Understanding Between the CITY and DISTRICT for the Development and Maintenance of Joint Use Facilities [MOU] adopted by the San Diego City Council on October 7, 2002 (Resolution No. 297149) and by DISTRICT's Board of Education on October 8, 2002, incorporated by reference.
- B. CITY desires to supplement park acreage to meet community recreational needs by utilizing the joint use facilities at the School for recreational purposes. DISTRICT desires the opportunity to use the improvements as described in Section 1 of this Agreement during its programs. It is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities that can serve the needs of both the general public and DISTRICT students and faculty.
- C. CITY and DISTRICT desire to establish this mutually beneficial arrangement by entering into this Agreement for a twenty-five (25) year period to provide for both Parties' recreational programs.
- D. The estimated average life-span of all improvements constructed within the Joint Use Area is no greater than the term of this Agreement.
- E. APPROVED PLANS shall hereby be defined as a copy of final construction plans signed by both the DISTRICT and CITY and kept on file with each entity.
- F. CITY and DISTRICT have previously entered into an agreement regarding the Edison Elementary School joint use facilities. The Agreement between the San Diego Unified School District and the City of San Diego Regarding Joint-Use Facilities at Edison Elementary School was adopted by the San Diego City Council on October 28, 1997 (Resolution No. 289350-1) and the DISTRICT's Board of Education on August 27, 1996. Pursuant to this Agreement, the DISTRICT agrees to pay all costs for electricity, water

and other expenses relating to maintenance of the joint use playfield for a period of twenty-five (25) years after completion of construction of the field area.

NOW, THEREFORE, the Parties agree as follows:

A G R E E M E N T

1. Property.

DISTRICT hereby leases to CITY a portion of that certain DISTRICT-owned real property located at Edison Elementary School, 4077 35th Street, San Diego, CA 92014 in the City Heights Community Planning Area depicted on Exhibit "A" of this Agreement, incorporated herein by this reference [Joint Use Area].

The Joint Use Area is further described as consisting of approximately 1.25 acres of artificial turf field area to include drainage, one (1) drinking fountain stub out, and two (2) District backstops with related fencing, incorporated herein by this reference [Joint Use Facilities].

2. Term.

2.1 Term. This Agreement shall be for a term of twenty-five (25) years, commencing on the date of its execution by both the Mayor, as authorized by ordinance adopted by the San Diego City Council, and by the authorized representative of the DISTRICT's Board of Education.

2.2 DISTRICT Wishes to Sell School. If at any time during the twenty-five (25) year period, DISTRICT should determine that the Joint Use Area is no longer needed for school purposes and if DISTRICT should propose to sell the school, DISTRICT shall so notify the CITY in writing pursuant to Section 9 and grant to CITY a two (2) year option, commencing on the date of said notification, to purchase all or part of the school, at its fair market value not including the value of the improvements constructed by or on behalf of CITY. In the event of such notification, the agreement shall terminate at the end of the two (2) year period or upon written notification by CITY that CITY does not intend to exercise its option.

2.3 DISTRICT Leases School. If at any time during the twenty-five (25) year period, DISTRICT should determine that the Joint Use Area is no longer needed for school purposes and if DISTRICT should propose to lease the School, DISTRICT shall so notify the CITY in writing pursuant to Section 9. Any such lease shall not interfere with the CITY's right to use the Joint Use Area, unless otherwise agreed to in writing.

3. Consideration.

3.1 Mutual Benefit. The Parties acknowledge that good, valuable, and adequate consideration exists in the mutual benefits enjoyed and the legal detriments

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incurred by the Parties in the use and maintenance of the Joint Use Area, as set forth in this Agreement.

3.2 Parity.

3.2.1 Reserved.

3.2.2 Reserved.

3.2.3 Reserved.

3.2.4 Review of Joint Use Agreement. CITY and DISTRICT shall meet prior to January 1 of each year to review the use of the Joint Use Area. As a result of this review, the use schedule; the implementation of a major maintenance or renovation effort; or any other capital improvement of the like may cause a need to revise the Agreement in accordance with Section 3.3 of this Agreement. Said changes, when made, shall then become a part of this Agreement.

3.3 Amendment. This Agreement may be amended or renewed in writing by mutual consent of DISTRICT and CITY as permitted by law.

4. Use of Property.

The Joint Use Area shall be used exclusively for the purpose of constructing, maintaining, and operating facilities for public education and recreation programs which shall include Joint Use Facilities in accordance with this Agreement.

4.1 CITY's Use of Property. CITY shall have exclusive use of the Joint Use Area for its recreational programs from thirty (30) minutes after the end of the school day until thirty (30) minutes before the beginning of the school day, Monday through Friday, on each and every day that school is in session during the traditional or single-track school year. CITY shall also have exclusive use of the Joint Use Area at all times on holidays, weekends, and other days when school is not in session. CITY agrees to coordinate and schedule community use of the recreational facilities during non-school hours. For any additional use, CITY shall make prior arrangements and coordinate scheduling with the DISTRICT.

4.2 DISTRICT's Use of Property. DISTRICT shall have exclusive use of the Joint Use Area for its public education programs from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day, Monday through Friday; on each and every day that school is in session during the traditional or single-track school year. For any additional use, including use for summer session, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY.

4.3 Wet Conditions. Reserved.

4.4 Scheduling Maintenance and Renovations. Major maintenance or renovation of Joint Use Facilities shall be scheduled to occur at times of the year when the

impact can be shared equally by both Parties and is estimated to total approximately six (6) weeks between the months of April and June each year, or other periods as mutually agreed to by both the CITY and DISTRICT

- 4.5 Additional Hours of Use.** CITY and DISTRICT may negotiate additional hours as necessary, when use by one Party is desired during a time when the other Party has exclusive use of the Joint Use Area. The Parties must give forty-eight (48) hours notice to the other if additional hours of use are needed, pursuant to Section 9 of this Agreement.
- 4.6 Conversion of Joint Use Area to Other Use.** CITY and DISTRICT agree that it may be necessary from time to time to adjust the boundaries of the Joint Use Area to accommodate the addition of portable classrooms or other non-recreational equipment or facilities to the School. The Parties agree that any adjustment of the boundaries of the Joint Use Area shall be agreed to in writing by CITY and DISTRICT, pursuant to Section 3.3 of this Agreement, and that DISTRICT shall: (1) obtain the CITY's approval of DISTRICT's plans; (2) provide CITY forty-five (45) calendar days written notice prior to placement of any such buildings, structures, equipment, or apparatus on the Joint Use Area; (3) at DISTRICT's sole expense, make any necessary modifications to the irrigation system and other improvements installed by or on behalf of CITY; and (4) at the end of such use, restore the improvements installed by or on behalf of CITY to their original condition or to a condition satisfactory to CITY within one hundred twenty (120) calendar days (not including plant maintenance and establishment period). Pursuant to Section II.C of the MOU, DISTRICT shall reimburse CITY its pro rata share for the cost of improvements on the area of changed use for that period of time that CITY is deprived of use. Reimbursement shall be made within thirty (30) days of the deprived use. The amount of reimbursement shall be based upon a straight-line depreciation.
- 4.7 Portable Restrooms.** The siting, installation and removal of portable restrooms shall be mutually agreed upon by the CITY and DISTRICT.
- 4.8 Programs, Services, and Activities.** No qualified individual with a disability, as defined by federal and state law, shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of CITY or DISTRICT which are offered or occur in the Joint Use Area, or be subjected to discrimination by CITY or DISTRICT in the use of the Joint Use Area.
- 4.9 Water Quality - Best Management Practices and Storm Water Pollution Prevention Plan.** CITY and DISTRICT are committed to the implementation of programs to manage activities on the Joint Use Area in a manner which aids in the protection of San Diego's water quality. All maintenance and construction activities associated with the Joint Use Area shall comply with the Environmental Protection Agency's National Pollution Discharge Elimination System program

and the Clean Water Act to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.

- 4.10 Litter, Vandalism and Graffiti Removal.** The DISTRICT shall be responsible for collection and removal of litter, repair of vandalism and removal of graffiti and/or painting of surfaces within the Joint Use Area during DISTRICT's respective hours of use, as described in Section 4.2. CITY shall be responsible for collection and removal of litter, repair of vandalism and removal of graffiti and/or painting of surfaces within the Joint Use Area during CITY's respective hours of use, as described in Section 4.1.

5. DISTRICT and CITY Responsibilities.

- 5.1 Construction of Improvements.** DISTRICT agrees to construct or cause to be constructed, at the DISTRICT's expense, upon the Joint Use Area as delineated in Exhibit "A" of this Agreement, including, but not limited to, the amenities described as Joint Use Facilities and in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction.

5.1.1 All such construction work shall be accomplished by DISTRICT employees or by the DISTRICT's contracting agents directly under control of DISTRICT. All construction shall meet the requirements and standards of CITY and DISTRICT and all applicable provisions of the California Education Code and California Code of Regulations.

5.2 Disabled Accessibility.

5.2.1 As required elsewhere in this Agreement, DISTRICT shall construct or cause to be constructed within the Joint Use Area, the Joint Use Facilities, and all paths of travel to the Joint Use Facilities within the Joint Use Area and all accessible routes from the adjacent public right-of-way consistent with the requirements of state and federal law for disabled access, including the California Government Code section 4450, et. seq., the California Building Code in the California Code of Regulations at Title 24, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Guidelines. When a conflict exists amongst requirements, the most restrictive requirement shall be followed, i.e., that which provides for the greater access. Said accessible routes shall be available during and after school hours.

5.2.2 Reserved.

5.3 Joint Use Parking Lot and Accessible Routes. Reserved.

5.4 Utilities.

5.4.1 Reserved.

5.4.2 Reserved.

5.4.3 Reserved.

5.4.4 DISTRICT shall pay for water to maintain fields.

5.5 Walls, Stairs, Pedestrian Ramps, Walkways, Planters, Mow Curbs and Retaining Walls within and leading to the Joint Use Area.

- 5.5.1 The DISTRICT shall be responsible for the installation of walls, pedestrian ramps, walkways, planters, mow curbs and retaining walls within and leading to the Joint Use Area.
- 5.5.2 DISTRICT shall ensure such work noted in this section meets all local, state and federal safety and accessibility regulations located within the Joint Use Area, as depicted on Exhibit "A" of this Agreement.
- 5.5.3 Repair of vandalism to walls, stairs, pedestrian ramps, walkways, planters and retaining walls with and leading to the Joint Use Area shall be in accordance with Section 4.10 of this Agreement.
- 5.5.4 DISTRICT shall be responsible for structural and non-structural repairs of walls, planters, mow curbs and retaining walls with and leading to the Joint Use Area.
- 5.5.5 Both Parties agree to meet as necessary, to assess the conditions of the existing walkways, stairs and pedestrian ramps within the Joint Use Area and existing walkways, stairs and pedestrian ramps leading to the Joint Use Area that are exclusively used to access the Joint Use Area during City's hours of use. If there are necessary structural or non-structural repairs to said walkways, stairs and pedestrian ramps DISTRICT shall repair the damage. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. DISTRICT shall invoice CITY half of the cost of the repairs and CITY shall reimburse DISTRICT as required.

5.6 Adjacent Areas. DISTRICT shall be solely responsible for maintaining the adjacent slopes and trees, mulch, mowcurbs, walkways (asphalt and concrete) that are inside of the Joint Use Area.

5.7 Storm Drain Utilities.

- 5.7.1 DISTRICT shall be responsible for the installation and maintenance associated with any necessary structural repair of the storm drain system within the Joint Use Area.
- 5.7.2 DISTRICT shall be responsible for cleaning and maintaining the storm drain facilities within the Joint Use Area.
- 5.7.3 DISTRICT shall be responsible for cleaning and maintaining the drainage system associated with the artificial turf installation within the Joint Use Area.

5.8 Fencing Areas. DISTRICT shall be responsible for installation, maintenance and repair of all fencing, including associated mow curbs, around the perimeter of the Joint Use Area. Fencing must accommodate access for CITY maintenance vehicles and for the public to Joint Use Area, as agreed upon by CITY and DISTRICT.

5.9 Backstops.

5.9.1 DISTRICT shall be responsible for the installation and maintenance of DISTRICT backstops associated within the Joint Use Area.

5.9.2 Reserved.

5.9.3 Reserved.

5.10 Children's Play Equipment. Reserved.

5.11 Hard Courts. Reserved.

5.12 Maintenance. DISTRICT shall, at DISTRICT's sole cost and expense, pursuant to section 3.2 of this Agreement, be responsible for the following:

Artificial Turf Level of Maintenance. Maintenance shall include, but is not limited to: grooming with approved equipment by the manufacturer; removal of dirt, food and debris by brush and vacuum; removal of spills of foreign substances with an approved cleaning solution approved by the manufacturer; drainage system maintenance; and other manufacturer recommended maintenance.

The following recommendations shall be adhered to: Footwear shall be restricted to that allowed per the manufacturer, motorized vehicles shall not be driven on the surfacing, the surfacing shall be protected from sharp or pointed edge from any objects or equipment placed on the field, and paints used for any lines and markings must be approved per the manufacturer.

5.13 Joint Use Field Damage Assessment and Repair. If fields are damaged by either CITY or DISTRICT during the term of this Agreement, DISTRICT shall repair the damage. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. If CITY is responsible for the damage, DISTRICT shall invoice CITY and CITY shall reimburse DISTRICT as required.

5.14 Maintenance of Running Track. Reserved.

5.15 Sports Field Lighting. Reserved.

5.16 Portable Restrooms. If CITY wishes to install portable restrooms within the JUA, CITY shall seek location approval from DISTRICT. CITY shall be responsible for maintenance of portable restrooms placed within the Joint Use Area. Placement and removal of portable restrooms shall be in accordance with Section 4.7 of this Agreement.

5.17 Maintenance of Trees within the Joint Use Area. Reserved.

5.18 Maintenance of Drinking Fountain. In the event a drinking fountain is installed, CITY shall be responsible for all maintenance of the drinking fountain, unless damage to the drinking fountain is attributed directly to the DISTRICT.

Drinking fountain shall be installed in a location to accommodate an accessible path of travel from the right-of-way, as approved by the CITY and DISTRICT.

6. **Healthy Schools Act.** CITY shall be responsible for compliance with all requirements of the Healthy Schools Act of 2000 (AB 2260) in the application of pesticides on the Joint Use Area. Whenever any pesticide use is intended on, or around the field (whether school is in session or not), CITY shall notify the DISTRICT, pursuant to Section 9 of this Agreement, at least fourteen (14) days prior to any such application, disclosing the specific type of pesticide that shall be used (DISTRICT approved pesticides only). CITY shall also post warning signs as required by AB 2260, twenty-four (24) hours prior to any pesticide application and leave warning signs posted for seventy-two (72) hours after the application. The CITY shall be responsible for removing the posted signs in a timely manner after the posting period. CITY shall notify parents/guardians/staff who have requested in writing to be notified seventy-two (72) hours prior to a pesticide application. The DISTRICT's Integrated Pest Management office shall supply a list of those individuals who wish to be notified to the CITY designee in charge of the pesticide application. Notice shall include product name, the active ingredient(s) in the product, and the intended area and date of application. CITY shall maintain pesticide records for four (4) years following application of any pesticides. For additional requirements or information, CITY may contact the California Department of Pesticide Regulation, at (916) 445-4300.

7. **Improvements.**

- 7.1 **Approval for Improvements to or Affecting the Joint Use Area.** Improvements shall not be installed by either party where the Joint Use Area is affected, nor shall construction of improvements begin until plans and specifications for the improvements are reviewed and approved by both Parties.
- 7.2 **Accessibility.** No new construction or alteration shall occur that reduces or negatively affects disabled access to the joint use area improvements, including any negative impact to paths of travel or accessible routes. Parties shall consult before new construction or alteration moves forward.
- 7.3 **Ownership.** All CITY-financed improvements installed during the term of this Agreement in the Joint Use Area shall remain the property of CITY.
- 7.4 **Removal of Joint Use Area Improvements.** All CITY-financed improvements installed in the Joint Use Area shall be removed from the DISTRICT-owned Joint Use Area by CITY upon request by DISTRICT per sections 4.6 (Conversion of Joint Use Area to Other Use) or 3.3 (Amendment) of this Agreement or upon expiration of this Agreement, and the Joint Use Area shall be returned to DISTRICT free of all legal encumbrances and in the condition existing at the commencement of this Agreement. In the event the CITY does not so remove its improvements, upon expiration or termination of this Agreement, as requested in writing by DISTRICT, DISTRICT may remove, sell, or destroy the same and restore the Joint Use Area to

the condition existing at the commencement of this Agreement. Upon written notice from the DISTRICT stating that the CITY-financed improvements installed within the Joint Use Area shall not be utilized by the DISTRICT, CITY shall reimburse the DISTRICT for the removal of the facilities and reinstatement of the Joint Use Area.

8. Insurance and Indemnification.

- 8.1 Indemnity.** DISTRICT agrees to defend, indemnify, protect and hold CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DISTRICT's employees, invitees, guests, agents, or officers, caused by the independent acts of DISTRICT, its agents or employees in connection with the performance of this Agreement and/or the use of the Joint Use Area or the School. CITY agrees to defend, indemnify, protect and hold DISTRICT, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY's employees, invitees, guests, agents, or officers, caused by the independent acts of CITY, its agents or employees in connection with the performance of this Agreement and/or the use of the Joint Use Area or the School.
- 8.2 Insurance.** CITY and DISTRICT acknowledge and warrant that they are self-insured in compliance with the laws of the State of California, that their self-insurance covers persons acting on their behalf or under their control, and that their self-insurance covers their use of the Joint Use Area as contemplated by this Agreement. The Parties further warrant that they shall notify the other Party of any insurance coverage change at least thirty (30) days prior to the change in accordance with the notice provisions of this Joint Use Agreement. Any coverage change must be approved by the other Party, which approval shall not be unreasonably withheld.
- 8.3 Workers' Compensation Insurance.** CITY and DISTRICT acknowledge and warrant that they maintain, and shall maintain for the term of this Agreement, Workers' Compensation coverage as required by law.

9. Notices.

Any notice required or permitted to be given under this Agreement shall be in writing and shall be effective (a) when delivered to the recipient by personal delivery or facsimile transmission, (b) on the second business day after mailing by certified or registered United States mail, or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the Party at the address shown below:

If to CITY: Park and Recreation Department Director
City of San Diego
202 'C' Street, M.S. 9A
San Diego, California 92101

If to DISTRICT: Superintendent
San Diego City Schools
4100 Normal Street
San Diego, California 92103-2682

10. General Provisions.

10.1 Quiet Possession. DISTRICT and CITY, subject to performing the covenants and agreements herein, shall at all times during the term of the Agreement peaceably and quietly have, hold, and enjoy the Joint Use Area.

10.2 Entry, Maintenance and Inspection. CITY reserves and shall always have the right to enter upon the Joint Use Area for the purpose of viewing and ascertaining the condition thereof, and for the purpose of maintenance of recreational facilities that cannot be accommodated during non-school hours. The time of maintenance shall be agreed upon by DISTRICT's Site Administrator and CITY's maintenance supervisor and shall be sensitive to the community's scheduled recreation programs, the school's instructional and athletic programs, and the availability of maintenance staff.

10.3 Assignment. CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. DISTRICT shall not assign this Agreement or any interest herein without the prior written consent of CITY. Any such assignment without such consent shall be void. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in the Agreement shall extend to and bind any successor(s) of the Parties. CITY reserves the right to enter into a partial assignment agreement with a third party to fulfill its maintenance responsibility. DISTRICT shall reserve the right to review the proposed third party maintenance agreement for compliance with Section 10.4 of this Agreement. DISTRICT shall receive a copy of the final third party agreement.

10.4 Fingerprinting Requirements. No assignment by CITY shall be permitted during times when the Joint Use Area is used or occupied for academic purposes or for other school-related functions, unless that employee or independent contractor and/or its contracting agents or any subcontractor complies with the following: (a) has submitted her/his fingerprints to the California Department of Justice ("DOJ") pursuant to Education Code

section 45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code section 45122.1 and has no criminal felony proceedings (as defined in Education Code section 45122.1) pending against her/him; (c) has provided written or electronic verification to the DISTRICT from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) has provided a Fingerprint Certification to the DISTRICT specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having a criminal felony proceeding pending against her/him.

- 10.5 Compliance with Law.** CITY and DISTRICT shall comply, and shall secure compliance by persons within their control and authority, with all the requirements of state and federal authorities now in force, or which may hereafter be in force, pertaining to the Joint Use Area, and shall faithfully observe and secure observance of all state and federal statutes now in force or which may hereafter be in force, in the use of Joint Use Area by persons within their respective control and authority.
- 10.6 Time is of the Essence.** Time is of the essence for each and all of the terms and provisions of this Agreement.
- 10.7 Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.
- 10.8 Remedies.** In the event that either Party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that Party and shall fail to cure the default within one hundred twenty (120) days following the service on the defaulting Party of a written notice, pursuant to Section 9 of this Agreement, from the second Party specifying the default complained of, then the second Party may, at its option, without further notice or demand upon the defaulting Party or upon any person claiming through the defaulting Party, immediately terminate this Agreement and all rights of the defaulting Party, and of all persons claiming rights through the defaulting Party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting Party, the second Party shall not terminate the Agreement pursuant to the default if the defaulting Party immediately commences to cure the default and diligently pursues such cure to completion.
- 10.9 Legal Proceedings.** The Parties agree that the laws of the State of California shall be used in interpreting this Agreement and shall govern all disputes and determine all rights under this Agreement.

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- 10.10 Entire Agreement.** This Agreement contains the complete expression of the whole Agreement between the Parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein.
- 10.11 Severance.** If any part of this Agreement is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, the latter to remain in full force and effect.
- 10.12 Nondiscrimination.** DISTRICT and CITY shall not discriminate in any manner against any person or persons on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, marital status, or disability in the providing of goods, services, facilities, advantages, and the holding and obtaining of employment. DISTRICT and CITY shall not allow such discrimination by others who are within their respective control and who from time to time may use the Joint Use Area with the permission and on the terms and conditions specified by either Party.
- 10.13 San Diego's Strong Mayor Form of Governance.** All references to "City Manager" in this Agreement, and all agreements between the Parties, shall be deemed to refer to "Mayor." This section is effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.

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11. CITY and DISTRICT Approval.

Whenever an act or approval is required by CITY pursuant to the terms of this Agreement, that act or approval shall be performed by the Mayor or his/her duly designated representative.

Whenever an act or approval is required by DISTRICT pursuant to the terms of this Agreement, that act or approval shall be performed by the Superintendent or his/her duly designated representative.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its Mayor pursuant to Ordinance No. _____ authorizing such execution, and by the San Diego Unified School District of San Diego County, California, acting by and through its Superintendent pursuant to approval by its Board of Education.

THE CITY OF SAN DIEGO,
a Municipal Corporation

SAN DIEGO UNIFIED SCHOOL DISTRICT
a public school district of the State of California

By: _____

Rick Reynolds

By: _____

David Umstot

Title: Assistant Chief Operating Officer

Title: Interim Chief Facilities Officer

Date: _____

Date: 18 MAY 2007

APPROVED AS TO FORM AND LEGALITY BY
MICHAEL J. AGUIRRE, CITY ATTORNEY

By: _____

Title: Deputy City Attorney

Date: _____

Exhibit "A": Depiction of the Joint Use Area

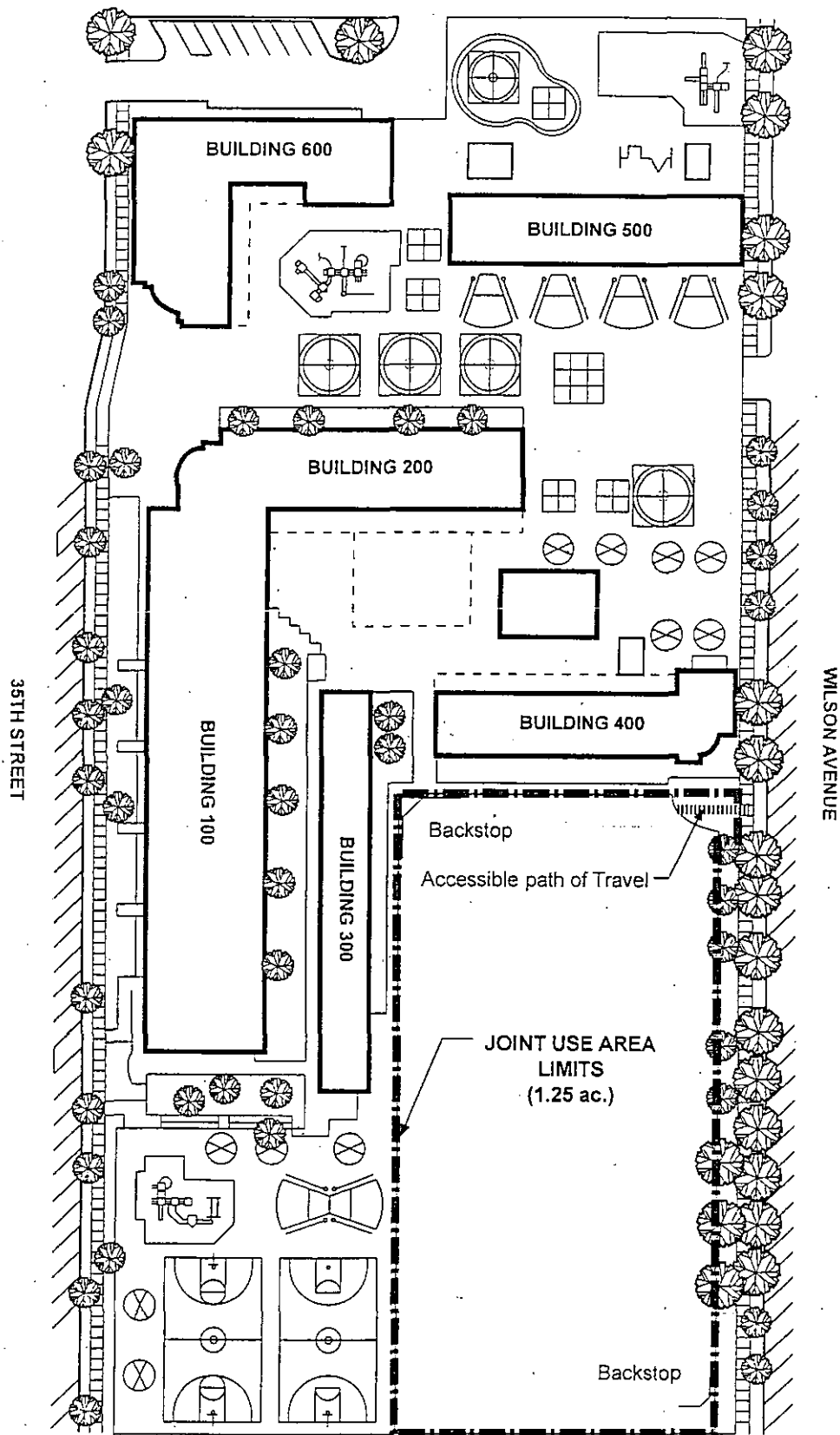
LEGALITY AND FORM APPROVED

Sandra T.M. Chong
SANDRA T.M. CHONG, Assistant General Counsel
San Diego Unified School District

Approved in public meeting of the
Board of Education of the San Diego
Unified School District on 2/23/07
Cheryl Ward
Cheryl Ward, Board Action Officer,
Board of Education

000315

Edison Elementary School - Joint Use Area



0 30
Scale in Feet

EXHIBIT "A"